

Patent Application No. 10/606,137
Amdt. Dated May 9, 2006
Reply to Office Action of December 9, 2005

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REMARKS

Applicants request reconsideration of the above-identified application in view of the foregoing proposed amendments and the following remarks.

Applicants have canceled 22-41, 45-46 and 49.

As a result of this amendment, the claims pending in this application are claims 1-21, 42-44, 47-48 and 50-63.

This application claims priority from U.S. Provisional Application Serial No. 60/412,307, filed September 20, 2002; U.S. Provisional Application Serial No. 60/421,432, filed October 25, 2002; and U.S. Provisional Application Serial No. 60/431,147, filed December 5, 2002. Thus, Applicants are entitled to a filing date of September 20, 2002.

In the prior Response, the Applicants filed a Suggestion of Interference with Elder et al. Application No. 10/247,504, Pursuant to 37 C.F.R. § 41.202, and supporting declarations and exhibits, to provoke an interference with Elder et al. U.S. Patent Application No. 10/247,504 ("the Elder '504 application"). That Suggestion is outstanding.

The outstanding rejections are (1) a 35 U.S.C. § 112, second paragraph rejection of claims 11-32 and 45-50; (2) a 35 U.S.C. § 103(a) rejection of claims 1-63 over the published Elder '504 application; and rejections of claims 22-41, 45-46 and 49 under 35 U.S.C. §§ 102 (b) and 103(a) over the Schroeder Patent (U.S. No. 4,272,554).

Section § 112 Rejections

Claims 11-32 and 45-50, stand rejected under 35 U.S.C. § 112, second paragraph. Applicants have amended independent claims 11, 16, 22, 27, 45 and 47 to overcome the

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35 U.S.C. § 112, second paragraph rejection. The Examiner has noted these amendments, but requests the Applicants show support for the amendments in the specification. As the Examiner is aware, the Applicants need not provide *in haec verba* support for these amendments.

"Section 112 of the Patent Act states that the 'specification shall contain a written description of the invention' 35 USC § 112. We have held that 'to fulfill the written description requirement, the patent specification must describe the invention in sufficient detail that one skilled in the art can clearly conclude that the inventor invented what is claimed.' *Cordis Corp. v. Medtronic AVE, Inc.*, 339 F.3d 1352, 1364 (Fed.Cir. 2003). We have cautioned, however, that 'the disclosure as originally filed does not...have to provide *in haec verba* support for the claimed subject matter at issue.' *Id.*" *Kao Corp. v. Unilever U.S., Inc.*, 441 F.3d 963 (Fed.Cir. 2006)

With that in mind, support for these amendments can be found throughout the specification (see, for example, the Background of the Invention), but specifically, in the Examples spanning pages 29-31, and more specifically, the three tables of results on these three pages. In these Examples, and the associated tabulated results, both control products and treated products are tested for their acrylamide levels after cooking. Of course, in all three Examples, the treated products show substantially lower levels of acrylamide than do the control products. The control products are the "food material in a previous condition" referenced in the amended claims. This would be quite clear to a person of ordinary skill in the art. As such, the amendments are supported by the specification and the rejection of these claims under 35 U.S.C. § 112, second paragraph, is believed to be over come.

Having shown support for the previous amendments, Applicants assert that the prior amendments overcome the Examiner's objection to the use of the relative term "reduced" in the claims. Specifically, those skilled in the art, in light of the present

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specification, and more specifically, in light of the Examples discussed above, will understand that the level of acrylamide in products treated according to the present claims have lower levels of acrylamide than do food material in a previous condition as shown in the Examples. It is believed that the present rejection of these claims under 35 U.S.C. § 112, second paragraph, has been overcome.

Applicants respectfully request reconsideration and allowance of Claims 11-32 and 45-50 over the Examiner's 35 U.S.C. § 112, second paragraph, rejection.

35 U.S.C. §§ 102 and 103 Rejections over Schroeder

Claims 22-41, 45-46 and 49 stand rejected under 35 U.S.C. §§ 102 (b) and 103(a) over the Schroeder Patent (U.S. No. 4,272,554). These rejections are respectfully traversed.

However, without addressing the merits of these rejections, in the interest of removing issues to allow for the Declaration of an Interference with the Elder application discussed below, all of the claims rejected over Schroeder have been canceled by the present amendment. As such, it is believed that the present rejections are obviated.

35 U.S.C. § 103 Rejection over Elder

Claims 1-63 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Elder, et al. (U.S. Patent Application No. 2004/0058054--hereinafter, Elder '054). This rejection is respectfully traversed.

This rejection is based on an application having a filing date only one day before Applicants' earliest effective filing date of September 20, 2002. While for reasons previously stated, Applicants do not agree with the basis for the Examiner's rejection of claims 1-63 over the published Elder '504 application, to overcome the rejection,

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Applicants now seek the Declaration of an Interference between claims 1-63 of this application and pending and allowable claims 1-8 and 11-15 of the Elder '504 application. Pursuant to 37 C.F.R. § 41.202, Applicants have submitted a Suggestion of Interference with Elder et al. Application No. 10/247,504, Pursuant to 37 C.F.R. § 41.202, together with the declarations of Dr. David Vincent Zyzak, Dr. Kwan Y. Lee, Deborah K. Ewald and Janice N. Batchelor, and supporting exhibits. This Suggestion of Interference seeks the declaration of an interference with the Elder '504 application and demonstrates why Applicants would prevail on priority versus the Elder '504 application.

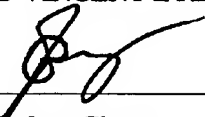
SUMMARY

The rejections in the Office Action have been discussed and, Applicants believe, the proper discussions and/or amendments have been set forth to address the rejection.

In light of both the amendments and the discussions contained herein, Applicants respectfully request reconsideration of the rejection and its withdrawal.

Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,
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